IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 11 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

LAKHABHAI LAVJIBHAI

Appearance:

1. INCOME TAX REFERENCE No. 11 of 1991

MR TANVISH U BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1981-82:-

"Whether, in law and on facts, the Appellate Tribunal was right in setting aside the order made by the Commissioner of Income-tax in exercise of his powers under section 263 of the Income-tax Act, 1961 as without jurisdiction?"

2. We have heard Mr Tanvish U Bhatt, learned counsel for the applicant- revenue. Though served, none appears for the respondent- assessee.

3. Our attention is invited to the decision of the Apex Court in CIT vs. Shri Arbuda Mills. Ltd. (1998) 231 ITR 50 wherein the Apex Court had held that in view of the Explanation to section 263(1) which was amended by the Finance Act, 1989 with retrospective effect from June 1, 1988, to the effect that where any order referred to in the sub-section and passed by the Assessing Officer had been the subject mater of any appeal (filed on or before or after the 1st day of June, 1988), the powers of the Commissioner under the sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal. The consequence of the amendment made with retrospective effect is that the powers under section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal.

Following the aforesaid decision, our answer to the question referred for our opinion is in the negative i.e. in favour of the revenue and against the assessee.

4. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-